

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

D. (No. 2)

v.

WIPO

140th Session

Judgment No. 5009

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms N. D. against the World Intellectual Property Organization (WIPO) on 5 December 2019 and corrected on 9 January 2020, WIPO's reply of 16 April 2020, the complainant's rejoinder of 26 August 2020, WIPO's surrejoinder of 24 November 2020, the complainant's additional submissions of 30 June 2023 and WIPO's final comments thereon of 9 October 2023;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant contests the "Effective performance" rating contained in her appraisal report covering the period from June 2017 to May 2018, as well as a comment made in such report about her having been on extended leave and having worked part-time during the appraisal period.

On 15 May 2016, the complainant started working as an Evaluation Officer, at grade P-3, in the Evaluation Section of WIPO's Internal Oversight Division (IOD), under the supervision of Mr E., a P-5 staff member who had been designated as Acting Director, IOD. Mr E. remained the Acting Director, IOD, until 1 February 2017, when

Mr R.S. was appointed as the new Director. Effective 30 June 2017, Mr E. separated from WIPO to join another international organization.

On 1 September 2017, Mr R.V. joined WIPO as Head of the Evaluation Section and became the complainant's direct supervisor.

On 31 May 2018, the complainant had a meeting with Mr R.V. to discuss her performance appraisal. On 1 June 2018, the complainant attended another meeting about her performance in presence of Mr R.V., Mr R.S. and another member of staff who worked in the IOD.

On 7 June 2018, Mr R.V. finalized the complainant's appraisal report for the period from June 2017 to May 2018. Mr R.V. rated the complainant's performance as "Effective performance". The section "Comments: a. Work-Related and Development-Related Objectives" filed by Mr R.V. contained the following introductory paragraphs:

"This [performance appraisal] is issued at the end of a temporary contract extension started in June 15th 2017 and ending in May 14th 2018.

I joined the organisation as of 1st of September to fulfil my duties as a newly appointed head of the evaluation section IOD.

The staff member under my supervision resumed her duties at the evaluation section in October 2017 after an extended leave period of four months. During the period under my supervision the staff member worked on a 50% time arrangement. Both of these elements have been take[n] into consideration in the assessment of the work achieved.

During the period referred above, the staff member effectively performed all the allotted tasks the evaluation assigned as per the approved oversight plan for 2017 in line with organizational needs."

On 19 June 2018, Mr R.S. approved Mr R.V.'s evaluation.

In August 2018, the complainant submitted a rebuttal of her performance report, requesting that the rating of her performance be changed from "Effective performance" to "Outstanding performance", that the reference to her extended leave and part-time arrangements during the appraisal period be deleted and that three typographical errors in the direct supervisor's comments be corrected.

On 11 September 2018, the complainant filed complaints of harassment against Mr R.S. and Mr R.V., in which she alleged, among other things, that her performance report, including the "Effective

performance” rating and her supervisor’s comment about her extended leave and part-time work, constituted harassment.

On 28 September 2018, the Director General notified the complainant of his decision to confirm the complainant’s performance appraisal, including the “Effective performance” rating and the comment about her leave and part-time arrangements, and to correct the three typological errors contained in the report.

On 21 December 2018, the complainant lodged an appeal with the WIPO Appeal Board (WAB), directed against the 28 September 2018 decision.

By letters dated 11 January 2019 and 25 February 2019, the Director General informed the complainant of his decisions to dismiss her complaints of harassment against Mr R.S. and Mr R.V. as devoid of merit. As part of his review of the complainant’s harassment complaints, the Director General specifically addressed the complainant’s allegations of harassment involving her performance appraisal and dismissed them as unfounded. The complainant launched separate appeals with the WAB against such decisions.

On 11 March 2019, the complainant resigned from WIPO, effective 11 April 2019.

In its report dated 8 July 2019, the WAB recommended that the complainant’s appeal about her performance appraisal be dismissed in its entirety. The WAB did not find flaws in the appraisal process. To the contrary, the WAB noted that the rating “Effective performance” was “a good rating, which did not criticize [the complainant’s] performance”. The WAB further observed that the reference to the complainant’s absence in the appraisal report “was to define, objectively and precisely, the period of time during which the supervisor had the possibility to work with the [complainant] and assess her performance”. Regarding the complainant’s allegations of harassment, made in her appeal, involving her performance appraisal, the WAB “could not take this argument into consideration as these claims of harassment are subject to separate Appeals, and therefore not covered by the scope of this current Appeal concerning [the complainant’s] performance appraisal”.

By letter dated 6 September 2019, the Director General notified the complainant of his decision to follow the WAB's recommendation and to dismiss her appeal. This is the impugned decision.

The complainant's appeals focusing on her harassment complaints against Mr R.V. and Mr R.S. were ultimately dismissed by the Director General as unfounded, respectively on 14 August 2020 and 1 September 2020. The Director General nevertheless decided that Mr R.S. would be required to attend a meeting with the Head of the Policy and Law Section of the Human Resources Management Department (HRMD), during which it would be explained to him that the meeting of 1 June 2018 should not have been attended by a third party without the complainant's express consent.

The complainant asks the Tribunal to set aside the impugned decision and order that the rating "Effective performance" in her appraisal report be changed to "Outstanding performance". She further requests that the reference to her extended leave and part-time arrangements be deleted from the report. Additionally, she requests that WIPO be instructed to launch disciplinary investigations against IOD senior officers, to be conducted by the United Nations Office of Internal Oversight Services (OIOS). She claims material, moral and exemplary damages, in an amount of not less than 100,000 Swiss francs. Finally, she seeks interest and the reimbursement of all legal fees, as well as "[s]uch other relief as is fair, just and necessary".

WIPO asks the Tribunal to dismiss the complaint in its entirety and submits that some aspects of the complaint are irreceivable.

CONSIDERATIONS

1. The complainant was a member of staff of WIPO including during the period from 15 June 2017 to 14 May 2018. A staff appraisal report (the Report) in relation to the complainant was prepared for that period. She resigned from the Organization on 11 March 2019 effective 11 April 2019. Many of the relevant facts are already set out in this judgment. Suffice it to note that the complainant challenges two elements of the Report. The first is an evaluation of her performance as

“Effective performance” rather than, as she asserts, an evaluation of “Outstanding performance”. The second is the inclusion in the Report of a comment about her having been on extended leave and having worked part-time during the appraisal period.

2. The complainant asks the Tribunal to “combine” the eleven complaints that she has filed before the Tribunal. Most of these complaints have already been determined. Moreover, while the facts in each of these complaints are part of the same continuum of events, the legal issues raised are quite discrete. Accordingly, the complaints will not be joined.

3. The complainant sought oral proceedings, but the Tribunal is satisfied it is in a position to make a fair and balanced decision having regard to the written material provided by the parties.

4. It is appropriate to refer, at the outset, to the principles which govern the Tribunal’s consideration of contentious appraisal reports. They were conveniently set out in Judgment 4564, considerations 2 and 3, and recalled in Judgment 4793, consideration 5:

“It is not for the Tribunal, whose role is not to supplant the administrative authorities of an international organisation, to conduct an assessment of an employee’s merits instead of the competent reporting officer or the various supervisors and appeals bodies which may be called upon to revise that assessment. [...] [A]ssessment of an employee’s merit during a specified period involves a value judgement; for this reason, the Tribunal must recognise the discretionary authority of the bodies responsible for conducting such an assessment. Of course, it must ascertain whether the ratings given to the employee have been determined in full conformity with the rules, but it cannot substitute its own opinion for the assessment made by these bodies of the qualities, performance and conduct of the person concerned. The Tribunal will therefore intervene only if the staff report was drawn up without authority or in breach of a rule of form or procedure, if it was based on an error of law or fact, if a material fact was overlooked, if a plainly wrong conclusion was drawn from the facts, or if there was abuse of authority.”

And, additionally, in Judgment 4902, consideration 9:

“Given the limited scope of the power of review of the Tribunal on performance appraisals as constantly indicated in the Tribunal’s case law (see, for example, Judgments 4787, consideration 5, 4786, consideration 4,

4713, consideration 11, and 4564, considerations 2 and 3, and the case law cited therein), the fact that the complainant's view of his performance is different than that of his supervisor is clearly not sufficient to set aside this evaluation and order that another one be undertaken."

5. Even if there is an arguable flaw in an evaluation report, there are limits on what powers the Tribunal might exercise if established. This limitation was adverted to in Judgment 4894, consideration 6:

"[T]he additional relief sought by the complainant [...] includes that the text in his staff report for 2009 be amended by order of the Tribunal. But it has long been acknowledged that a request such as this would involve an impermissible determination by the Tribunal of what the appraisal should be (see, recently, Judgment 4786, consideration 1)."

6. It should be noted that the complainant's grievances about the Report were considered by amongst others, three members of the WAB during the internal appeal. Their conclusions dated 8 July 2019 contain the following:

51. The [complainant] had received 'Effective performance' in her performance appraisal report and wanted this to be changed to 'Outstanding performance', but the Director General agreed with both her supervisor and the reviewing officer that the rating 'Effective performance' was fair and should be maintained. Such a rating was in the Board's view a good rating, which did not criticize her performance. In fact, in reviewing her performance appraisal report, the Board could not see any intention by her superiors to lessen her performance or criticize her work. It was the prerogative of her superiors to give their appraisals, while following the standard rules and procedures established by WIPO. The Board could not find any procedural flaws in the appraisal process as this seemed to have been conducted fully in line with the standard rules and procedures of WIPO.
52. Furthermore, the [complainant] had requested that a reference to her leave be deleted from the performance appraisal. The Board shared the view of the Administration of keeping the reference, as the purpose of the questioned statement was to define, objectively and precisely, the period of time during which the supervisor had the possibility to work with the [complainant] and assess her performance as an Evaluation Officer at IOD.
53. In conclusion, the Board could not find any procedural flaws in the appraisal of the [complainant]."

7. These factual conclusions are manifestly the product of a thoughtful and balanced consideration of the issues raised by the complainant and warrant the deference the Tribunal's case law has repeatedly acknowledged (see Judgments 4850, consideration 3, 4488, consideration 7, and 3608, consideration 7).

8. The complainant's legal argument in her brief is advanced under one heading only, namely: "[t]he performance appraisal document created a distorted picture and undermined the work of the [c]omplainant, which constitutes bullying and harassment". Much of the argumentation is directed to establishing what, as she alleges, was a "hostile and abusive [work] environment" and, additionally what in the complainant's view was the appropriate evaluation, namely "Outstanding performance". The latter invites the Tribunal to undertake a role it eschews (see consideration 4 above) and the former is irrelevant to the lawfulness of the appraisal, at least at the high level of generality argued by the complainant.

9. The complainant's rejoinder also does not raise any argument of substance concerning the lawfulness of the appraisal and again mainly focuses on a generalized complaint about the environment in which the complainant had worked. Indeed, the complainant goes so far as to make a submission in the rejoinder that WIPO made false and intentionally misleading statements in its reply in these proceedings "to obstruct justice and cover-up harassing and barbaric treatment of the [c]omplainant at WIPO". How such a submission bears upon the lawfulness of the appraisal is not at all obvious.

10. No case is made out that the appraisal was unlawful. Accordingly, the complaint should be dismissed. However, this is not a case where costs should be awarded in favour of the Organization, as it seeks, since the complaint cannot be regarded as vexatious, frivolous or as an abuse of process.

DECISION

For the above reasons,

The complaint is dismissed, as is the counterclaim for costs.

In witness of this judgment, adopted on 8 May 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.